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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4316 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRABEN KANTILAL CHUDASAMA

Versus

STATE OF GUJARAT

Appearance:

MR PJ KANABAR for Petitioners

MS.R.V.ACHARYA, Ld.AGP for respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/07/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners, the widow and three minor children of deceased Kantilal Mohanlal Chudasama, who belong to a Scheduled Caste have prayed for a writ

directing the respondent authorities, i.e. the State of Gujarat and District Collector, Amreli to provide immediate financial assistance to the petitioners and other benefits as provided under the relevant Government circulars.

2. Kantilal Chudasama belonged to a Scheduled Caste. As per FIR No.26/98 which was lodged at the Amreli Police Station, on 1.3.1998 Kantilal Chudasama came to be murdered by one Jagabhai Manjibhai Barot and Kathi Bharatbhai Manabhai of Amreli. As per the allegations in the FIR Jagabhai held the deceased and Bharatbhai Manabhai inflicted knife blow on the deceased on the left lower portion. The deceased succumbed to the injuries while he was being removed to the Hospital. As per the FIR (at annexure "A" to the petition) and as per the Post Mortem report (at annexure "B" to the petition) the cause of death was hamoerrage as a result of injury to left kidney. Both the accused have been chargesheeted and a special case is pending before the Sessions Court at Amreli.

The petitioners applied before the Collector for compensation and other benefits as payable under the relevant Government circulars, particularly, Government Resolution dated 11.8.1995. The request came to be turned down on the ground that the petitioner was not attacked by higher caste persons and the person who attacked the deceased Kantilal was not a higher caste person. One of the two accused belongs to a Scheduled Caste and therefore in view of the Govt.resolution dated 15.2.95 at annexure "I" to the affidavit-in-reply, the benefit of Government Resolution dated 16.10.1982 can not be extended in a case where the victim belonging to a Scheduled Caste is attached by another person belonging to Scheduled Caste/Scheduled Tribe. In view of the above the above decision, the petitioenrs have filed the present petition for the aforesaid reliefs.

3. In response to the notice issued by the Court affidavit-in-reply has been filed by the Deputy Director, Scheduled Caste Welfare, Gandhinagar raising the same defence and contending that there is no provision in the Attrocities Act to give financial aid in case of an incident between Scheduled Castes and Scheduled Tribes among themselves.

4. Having heard Mr.Kanabar, learned Counsel for the petitioners and Ms.Acharya, Ld.AGP for respondents it appears to the Court that the stand adopted by the respondents can not be upheld. It is true that one the

two accused belongs to a Scheduled Caste, but merely on that ground the petitioners could not have been deprived of the benefits of the Govt.Resolutions of 1982 and 1995. The object of the aforesaid circulars is that when a person belonging to Scheduled a Caste/Scheduled Tribe has to undergo attrocities at the hands of others, and ultimately if the victim succumbs to injuries the family members, particularly, his dependants should not be left in the lurch . From the allegations made in the FIR it is obvious that the deceased Kantilal Chudasama was employed as a ticket booking clerk in a cinema hall and Jagabhai Manjibhai Barot and Kathi Bharatbhai Manabhai went there to get some tickets for blackmarketing and the deceased Kantilal refused to accept their request, Jagabhai held the deceased and Kathi Bharatbhai inflicted serious knife injuries. Therefore, it can not be said that the deceased had not undergone attrocities at the hands of a higher caste person. In this connection it would also be pertinent to refer to the decision of the Andhra Pradesh High Court in Naga Bhixam @ Bhixapathi vs State of AP reported in 1996 CRI.L.J.2400 where it is held that "when a crime is committed on persons belonging a Scheduled Caste/Scheduled Tribe person, there need not be any substantial allegation that the offence is committed against the victim because he belongs to Scheduled Caste/Scheduled Tribe".

5. Of course, the criminal case is yet to be decided and therefore this Court does not express any final opinion, but the benefits which are required to be given under the aforesaid resolutions shall have be given to the petitioners. However, considering the fact that petitioner No.1 is a widow and petitioner Nos 2 to 4 are the minor children, it would be in their interest to see that an amount of Rs.1,50,000/- payable under the aforesaid resolutions is not paid to them in cash or by cheque, but that the amount is deposited in a long term Fixed Deposit and the monthly interest accrued thereon shall be paid to the petitioners for their maintenance every month. It is clarified that this Court does not direct the respondents to give the petitioners any other benefit under the aforesaid Government Resolutions at this stage.

6. In view of the above discussion, this petition is partly allowed. The impugned reply dated 13.1.1999 rejecting the petitioners' claim for benefits under the Government Resolutions in questions is hereby quashed and the respondents are directed to give the petitioners the

benefits under the Govt.Resolutions of 1982 and 1995. It is however directed that the the amount payable to the petitioners under the aforesaid Government Resolutions shall not be paid to the petitioners in cash or by cheque and the said amount shall be deposited by the respondent No.2 in Fixed Deposits with any nationalised bank which is nearest to the residence of the petitioners in the joint names of the petitioners for a period of 5 years and the monthly interest accrued thereon shall be permitted to be withdrawn by the petitioners for their maintenance every month. The directions contained in this judgment shall be implemented within a month from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

25.7.2000 (M.S.SHAH,J)